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Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAR - 2 2005

Federal Communications Commission  
Office of Secretary

In the Matter of	)	MB Docket No. 04-191
	)	
San Francisco Unified School District	)	
	)	
For Renewal of License for Station	)	Facility ID No. 58830
KALW(FM), San Francisco, California	)	File No. BRED-19970801 YA

To: Marlene H. Dortch, Secretary

Attention: Richard L. Sippel  
Chief Administrative Law Judge

**OPPOSITION TO ENFORCEMENT BUREAU'S MOTION TO ENLARGE ISSUES**

The San Francisco Unified School District ("SFUSD") hereby opposes the Motion to Enlarge Issues dated February 15, 2005 (the "Motion to Enlarge"), submitted in this proceeding by the Enforcement Bureau (the "Bureau"). 1/ In the Motion to Enlarge, the Bureau requests enlargement of the designated issues to include an additional issue:

To determine whether San Francisco Unified School District made misrepresentations of fact and/or lacked candor during discovery.

The gravamen of the Motion to Enlarge is the Bureau's concern that the deposition testimony of Nicole Sawaya, the current General Manager of KALW, "reflected that she had nothing to do with the substance of SFUSD's April 2001 response to the LOI [the February 5, 2001 letter of inquiry from the Mass Media Bureau to SFUSD]," notwithstanding that in a memorandum dated March 8, 2001 (the "March 8<sup>th</sup> Memorandum"), Ms. Sawaya

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1/ This Opposition is timely filed, by Order of the Presiding Administrative Law Judge ("ALJ"), Order, FCC 05M-09 (issued Mar. 1, 2005; rel. Mar. 2, 2005).

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expressed “her views as to how the LOI should be answered,” thereby “rais[ing] questions about the truthfulness of Ms. Sawaya’s deposition testimony with respect to her knowledge of and involvement with SFUSD’s LOI response.” 2/

Addition of the issue is not warranted. Ms. Sawaya did not deny or unduly minimize her involvement in the response to the LOI drafted by the Sanchez Law Firm, former communications counsel to SFUSD. To the contrary, on many occasions during her deposition testimony, Ms. Sawaya described her review of the public inspection file and her review of a draft of the response prepared by the Sanchez Law Firm.

For instance, Ms. Sawaya, who began working at KALW on March 1, 2001, explained that she had looked at the public inspection file at the very beginning of March 2001. 3/ Ms. Sawaya testified at her deposition that she did not know who was providing documents to be used by the Sanchez Law Firm to respond to the LOI, but stated that she knew “that Bill [Helgeson, Operations Manger] was reviewing the Public File, the Issues Programs List specifically”; that Mr. Helgeson was organizing the public inspection file with a station volunteer; and that she believed Mr. Helgeson provided copies of documents from the public file to counsel for use in drafting the response. 4/ Moreover, Ms. Sawaya testified that she assumed the LOI response statement regarding the belief of “present management” that the file was complete referred to Mr. Helgeson and herself, notwithstanding that she had not provided a statement for the response. 5/ Ms. Sawaya explained at her deposition that towards the end of March 2001, she had personally satisfied herself that the public inspection file was complete

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2/ Motion to Enlarge at ¶¶ 5- 6.

3/ Sawaya Deposition, p. 355, lines 22-23; p. 376, lines 7-15 (excerpts of deposition transcript at Attachment A hereto).

4/ *Id.*, p. 391, lines 2-6; p. 394, lines 12-19; p. 396, lines 5-15.

5/ *Id.*, p. 389, lines 16-25; p. 390, lines 1-8.

from 1992 on, and that the LOI response referred to both her and the Operations Manager's review of the file. 6/

Moreover, Ms. Sawaya confirmed at her deposition that she saw a draft of the response to the FCC LOI. 7/ While she explained at the deposition that she did not recall if she had been asked to provide information or comments relative to the letter, 8/ Ms. Sawaya noted that she "had put a few things in motion," such as moving the public file into a locked cabinet in her office, and that she wanted to make sure that going forward the file would reflect all of KALW's public affairs programs. 9/ Ms. Sawaya testified that "I do remember looking at the letter, trying to read it as best I could, certainly not with the eye that I have now." 10/ She was not asked to supply a declaration or verify what was in the response to the LOI. 11/ Ms. Sawaya stated at her deposition that, although she reviewed the response to directive number two of the LOI in draft form, she could not confirm that it was accurate. 12/ As Ms. Sawaya explains in the declaration at Attachment B hereto (at ¶ 15), she "knew that Mr. Helgeson [the KALW Operations Manager], as well as Ms. Wright [her supervisor] and Mr. Campos [a lawyer with the City Attorney's Office], would be reviewing the draft [response to the LOI], and Mr. Helgeson in particular could confirm details relating to the public inspection file."

As to the March 8th Memorandum, Ms. Sawaya did not recall drafting that memorandum, and, as she explains in the attached declaration, she did not have the opportunity prior to her deposition to review the March 8th Memorandum or the other items submitted by

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6/ *Id.*, p. 393, lines 6-25; p. 394, lines 1-11  
7/ *Id.*, p. 370, lines 18-23; p. 378, lines 12-16.  
8/ *Id.*, p. 370, lines 24-25; p. 371, lines 1-2.  
9/ *Id.*, p. 371, lines 1-7.  
10/ *Id.*, p. 376, lines 24-25; p. 377, lines 1-5.  
11/ *Id.*, p. 377, lines 6-11.  
12/ *Id.*, p. 378, lines 12-19.

SFUSD to the Bureau in response to their second and third document requests. 13/ After reviewing the March 8<sup>th</sup> Memorandum in January 2005, Ms. Sawaya continues to have no independent recollection of the memorandum or of having drafted it; however, she does believe she is the author. 14/ Nevertheless, Ms. Sawaya still cannot recall whether she was asked by Mr. Sanchez to author the memorandum or if she decided to take on the task herself. 15/ Ms. Sawaya explains that had she reviewed the March 8th Memorandum before her deposition, on that basis, she might have been able to state with more precision what information she had provided to Mr. Sanchez for his use in the preparation of the LOI response. 16/

Thus, although it is possible that Ms. Sawaya's deposition testimony might have been more precise about the information she provided to the Sanchez Law Firm in the first weeks of her tenure at the Station if her recollection had been refreshed by review of the March 8th Memorandum, even without that recollection, Ms. Sawaya fairly and accurately described her participation in the preparation of the response to the LOI.

Furthermore, Ms. Sawaya had no motive to misstate her involvement in the response to the LOI or her authorship of the March 8<sup>th</sup> Memorandum. Ms. Sawaya began her employment at KALW on March 1, 2001. She therefore could not have known what was – or was not – in KALW's public inspection file on August 1, 1997, the critical issue in the proceeding. Nor did she provide a supporting declaration to the response to the LOI. Rather, in

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13/ Sawaya Declaration at ¶ 5. The Sanchez Law Firm did not provide to SFUSD the March 8th Memorandum and other correspondence to and from SFUSD involving the renewal challenge until January 2005, notwithstanding that in July 2004, SFUSD's new counsel requested that Mr. Sanchez transfer all of the KALW files to new counsel.

14/ *Id.* at ¶ 6. Moreover, Ms. Sawaya explains that after she reviewed the copy provided by the Sanchez Law Firm in January 2005, she was able to locate a computer file of the March 8th Memorandum, which is additional evidence that Ms. Sawaya is the author of the memorandum. *Id.* at ¶ 11.

15/ *Id.* at ¶ 6.

her first days in her new position at KALW, Ms. Sawaya undertook a review of the public inspection file and provided to legal counsel candid responses to the LOI based on what she found.

The Bureau also describes Mr. Helgeson's deposition testimony as "typically stat[ing] that he did not know or did not recall supplying the factual details set forth in [the April 2001 LOI] response, notwithstanding that he had supplied the only verifying declaration to the response." 17/

Indeed, Mr. Helgeson testified that he did not have knowledge of what was in the KALW public inspection file on August 1, 1997. 18/ Mr. Helgeson explained that he "was backing up what Jeff [Ramirez, then General Manager] had signed, based on what Jeff had said on August 1st [1997] . . . I'm taking Jeff's word for it. . . . I based my 'yes' on his 'yes.'" 19/ Mr. Helgeson testified that when he looked at the KALW public inspection file just before the response to the LOI was prepared, he determined that documents were missing and "[i]f I saw something missing then we took care of that." 20/

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[Footnote Continued]

16/ *Id.* at ¶ 10.

17/ Motion to Enlarge at ¶ 4.

18/ Helgeson Deposition, p. 287, lines 4-8; p. 295, lines 19-22; p. 299, lines 1-5; p. 300, lines 12-13 (excerpts of deposition transcript at Attachment C hereto).

19/ *Id.*, p. 299, lines 13-23; p. 300, lines 1-13; *see also id.*, p. 274, lines 2-13; p. 286, lines 17-19; p. 287, lines 17-24; p. 315, lines 9-22; p. 317, lines 9-11.

20/ *Id.*, p. 300, lines 3-9; *see also id.*, p. 303, lines 19-25; p. 304, lines 1-11 (noting that in March/April 2001, there were gaps in the KALW public inspection file, and while efforts were undertaken to complete the file, gaps remained); p. 272, lines 9-14 (missing ownership report was prepared); p. 278, lines 5-17 (file did not look complete, 2001 effort to complete file); p. 309, lines 14-25; p. 310, lines 1-11; p. 319, lines 3-25; p. 320, lines 1-3) (National Public Radio Quarterly Issues Programs Listing for first quarter 1997 was generated by station on March 14, 2001; could not have been in file on August 1, 1997; with help of volunteer all the quarterly lists from NPR were downloaded); p. 316, lines 8-13 (when file reviewed in 2001, there were missing program guides); p. 336, lines 1-5, lines 22-25; p. 337, lines 1-4; p. 337, lines 19-25; p. 338, lines

[Footnote Continued]

While Mr. Helgeson's testimony was limited by the exercise of the attorney-client privilege, 21/ and by his lack of recollection as to exactly what information he provided for use in the preparation of the response to the LOI, 22/ Mr. Helgeson made clear at his deposition that he had reviewed the public inspection file and worked with counsel on the response to the LOI and that he had provided the supporting declaration to the response. 23/ Moreover, contrary to the Bureau's contention that "there was no indication [from Mr. Helgeson's testimony] that Ms. Sawaya had any role in gathering or verifying the information provided in SFUSD's LOI response," 24/ both Mr. Helgeson's and Ms. Sawaya's testimony confirmed that Ms. Sawaya participated in the review of the public inspection file in March 2001 and in the preparation of the response to the LOI. 25/

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[Footnote Continued]

1-9; p. 339, lines 16-19; p. 340, lines 11-25; p. 341, lines 1-15 (when file reviewed in 2001, ownership reports for 1999, 2000 and 2001 were deemed missing, were created by Mr. Helgeson and dated and signed by Ms. Wright on March 7, 2001).

21/ See, e.g., *id.*, p. 255, lines 4-17, p. 269, lines 9-14; p. 273, lines 16-24; p. 275, lines 23-25; p. 276, lines 21-25; p. 277, lines 1-5; p. 281, lines 7-9; p. 329, lines 14-19.

22/ See, e.g., *id.*, p. 276, lines 11-12.

23/ See, e.g., *id.*, p. 255, lines 2-9 (Helgeson declaration for response prepared by counsel); p. 269, line 9; p. 275, lines 23-24 (conversations with counsel); p. 276, lines 24-24; p. 277, lines 1-2 (conversations with attorney would have been about the public file); p. 284, lines 23-25; p. 285, lines 1-9; p. 321, lines 3-8 (declaration filed with response to LOI based on Mr. Helgeson's personal review of the public inspection file); p. 297, lines 23-25; p. 298, lines 1-3 (Mr. Helgeson is the person answering yes to the response to LOI); p. 320, lines 20-25; p. 321, lines 1-2, 9-14 (references to Operations Manager in response to LOI is to Mr. Helgeson); p. 322, lines 2-10 (information for response to directive five of LOI agreed to by Mr. Helgeson and Ms. Sawaya).

24/ Motion to Enlarge at ¶ 4.

25/ See, e.g., Helgeson Deposition, p. 272, lines 18-25; p. 273, line 1 (Ms. Sawaya aware that Mr. Helgeson was preparing documents relating to public inspection file); p. 294, lines 3-19 (conversation between Mr. Helgeson and Ms. Sawaya regarding missing public file documents from unlocked file); p. 302, lines 4-13; p. 311, lines 24-25; p. 312, lines 1-5, 13-22 (assume reference in response to LOI to present management review of public inspection file is to Mr. Helgeson and Ms. Sawaya); p. 322, lines 2-10 (information for response to directive five of LOI agreed to by Mr. Helgeson and Ms. Sawaya); p. 328, lines 17-23 (during response

[Footnote Continued]

As demonstrated above, the record does not support enlargement of issues as to SFUSD's and its employees' forthrightness during discovery. In fact, it is important to note that this is a proceeding where, time after time, the licensee and deponents have demonstrated their veracity by making admissions against interest. The former general manager of KALW has admitted that, with his current understanding, he should have checked "No" instead of "Yes" in response to Question 2 of Section III of the renewal application as to the completeness of the public inspection file and its timely maintenance during the license term. 26/ In its admissions to the Bureau, SFUSD admitted that the 1993 and 1995 ownership reports were not timely placed in the public inspection file, having been prepared in December 1997. 27/ The deponents confirmed in their testimony that such ownership reports were executed after the renewal certification. 28/ KALW's Operation Manager has admitted that when he inspected the public inspection file in February/March 2001, required items, including ownership reports and issues/programs lists, were missing, at which point they were replaced or generated. 29/ With

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[Footnote Continued]

preparation, Ms. Sawaya would have overseen bringing matter to attention of superior); Sawaya Deposition p. 389, lines 16-25; p. 390, lines 1-8; p. 391, lines 11-20; p. 392, lines 8-16 (Ms. Sawaya assumes the references to present management in the response to the LOI referred to Mr. Helgeson and probably herself); p. 393, lines 6-25; p. 394, lines 1-11 (LOI response referred to both Ms. Sawaya and Mr. Helgeson's review of the public inspection file); p. 370, lines 18-23; p. 378, lines 12-16; p. 376, lines 24-25; p. 377, lines 1-5 (Ms. Sawaya reviewed a draft of the response to the LOI).

26/ Ramirez Deposition, p. 49, lines 3-15; p. 105, lines 2-12 (excerpts of deposition transcript at Attachment D hereto).

27/ See SFUSD's Objections and Responses to the Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents, at Answers 12-17 (Sep. 7, 2004) (copy at Attachment E hereto).


28/ Ramirez Deposition, p. 101, lines 10-25; p. 102, lines 1-5, 12-25; p. 103, lines 1-6; p. 104, lines 5-11; Sawaya Deposition, p. 400, lines 4-16; p. 401, lines 18-20; Helgeson Deposition, p. 325, lines 6-13.


29/ See *supra* note 20.

that understanding, SFUSD supplemented its admissions to the Bureau to admit that at the time KALW's renewal application was certified, the public inspection file did not contain issues/programs lists for the entire license period, as required by 47 C.F.R. Section 73.3527. 30/ In addition to these admissions, SFUSD has waived the attorney-client and attorney work product privileges relating to the subject time periods so that the record may be as complete as possible. 31/

In sum, the deposition testimony of Ms. Sawaya and Mr. Helgeson are consistent with each other and with the documentary record. There is no material issue of fact of misrepresentation or lack of candor during the discovery process. SFUSD respectfully submits that the Presiding Administrative Law Judge must deny the Bureau's Motion to Enlarge.

Respectfully submitted,

  
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March 2, 2005

Counsel to the San Francisco Unified School District

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30/ See SFUSD's Revised Objections and Responses to Enforcement Bureau's Request for Admission of Facts and Genuineness of Documents, at Answers 18-19 (Oct. 12, 2004) (copy at Attachment F hereto).

31/ See SFUSD's Objections and Responses to Enforcement Bureau's First, Second and Third Requests for Production of Documents, at 4 (Feb. 5, 2004) (copy (attachments excluded) at Attachment G hereto).



### Certificate of Service

I, Regina Hogan, hereby certify that on this 2<sup>nd</sup> day of March, 2005, a copy of the foregoing **Opposition To Enforcement Bureau's Motion To Enlarge Issues** was sent by hand-delivery to:

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Federal Communications Commission  
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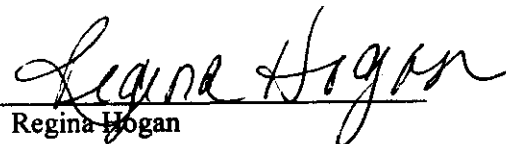
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**ATTACHMENT A**

**EXCERPTS FROM DEPOSITION OF NICOLE SAWAYA**

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# UNITED STATES FEDERAL COMMUNICATIONS COMMISSION

In Re Applications of:

SAN FRANCISCO UNIFIED  
SCHOOL DISTRICT

STATION KALW(FM)  
For Renewal of License

MB DOCKET No.: 04-191

File No.: EB-04-IH-0270

INTERVIEW OF NICOLE SAWAYA

Volume: 4

Pages: 352 through 425

Place: San Francisco, CA

Date: September 28, 2004

## HERITAGE REPORTING CORPORATION

*Official Reporters*

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# ORIGINAL

1                    P R O C E E D I N G S

2                    MR. SHOOK: Would you swear in the witness.

3                    COURT REPORTER: Please raise your right hand.

4                    Whereupon,

5                    NICOLE SAWAYA

6                    was called as a witness herein and, having been duly sworn,

7                    was examined and testified as follows:

8                    E X A M I N A T I O N

9                    BY MR. SHOOK:

10                  Q      Could you state your name please?

11                  A      Nicole Sawaya.

12                  Q      And I know you've already spelled it for the Court  
13                  Reporter, so you don't have to do it again.

14                  A      Okay.

15                  Q      And what is your current address?

16                  A      499 Alabama Street, Suite 252, San Francisco  
17                  94110.

18                  Q      How long have you resided at that address?

19                  A      On and off since 1970.

20                  Q      What is your current occupation?

21                  A      General Manager KALW.

22                  Q      How long have you been the General Manager?

23                  A      Since March 1, 2001.

24                  Q      Prior to that time, let's go back ten years, if  
25                  you could give a brief description of your employment during

Heritage Reporting Corporation  
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1 that period, from March 2001 back to 1991?

2 A In 1991 I was still a journalist, I was an  
3 independent reporter in Public Radio. I worked out of the  
4 other Public Radio Station here in the city, KQED FM. I was  
5 also doing television work for them as well, on camera work.  
6 And I was a stringer for National Public Radio, NPR, and  
7 Monitor Radio at CAL NET, which was a California news  
8 service, defunct now. And I was also in the process of  
9 getting my degree at college.

10 Q Okay. So, now did that situation basically go on  
11 from 1991 to 2001?

12 A No. In 1993 I graduated, in January of 1993, and  
13 in April of 1993 I landed a job up in Filo, California, in  
14 Mendocino County, at a radio station, Public Radio Station  
15 KZYX, and I landed a part time job as Program Director. I  
16 then morphed into Station Manager towards the end, and I  
17 left KZYX December of 1995, and I had been recruited by  
18 National Public Radio to go out and work there, and decided  
19 to leave California. And I started at NPR, I believe it was  
20 January 17, 1996.

21 Q So, that brought you to the Washington D.C. area?

22 A Exactly right.

23 Q And you stayed there for how long?

24 A Almost two years to the day. I left, my last day  
25 was like December 20, 1997.

1           Q     Now, when you had a chance to talk with  
2     Dr. Ackerman, in the meantime, between the Jackie Wright  
3     interview and the Dr. Ackerman interview, did you become  
4     aware that there was a license renewal challenge against  
5     KALW's renewal application?

6           A     No, I did not.

7           Q     During the interview with Dr. Ackerman did it come  
8     to your attention that there was a license renewal  
9     challenge?

10          A     No, it did not.

11          Q     Following the interview with Dr. Ackerman and  
12     before you actually started to work at the radio station,  
13     did it come to your attention that there was a license  
14     renewal challenge?

15          A     No, it did not.

16          Q     Surprise, surprise.

17          A     Bingo.

18          Q     When you started to work at the radio station on  
19     March 1, 2001?

20          A     Yes.

21          Q     A happy date I hope. Did it come to your  
22     attention at that time that there was a license renewal  
23     challenge?

24          A     It came to my attention probably about two or  
25     three days after I had started work.

1 Q And what did you find out?

2 A I was told by Bill, oh, by the way, there's a  
3 license challenge against the station from 1997.

4 Q And in response to that, you said?

5 A Oh my God. You guys are kidding.

6 MS. REPP: Just a sort of spontaneous response.

7 BY MR. SHOOK:

8 Q Ms. Sawaya, I am showing you a letter from the  
9 Federal Communications Commission that's addressed to Ernest  
10 Sanchez?

11 A Yes.

12 Q And it concerns KALW Radio. And my question to  
13 you is, have you seen this letter before today?

14 A I might have, I cannot say for sure. My guess is,  
15 and this is only a guess, that I have not or that I did not,  
16 but quite frankly, sir, I really don't remember.

17 Q You're making me feel old.

18 A I'm just trying to be respectful.

19 Q All right. If could please just read to yourself  
20 what follows from the word 'Accordingly', and there are  
21 numbers one through five that extend from page two to page  
22 three, if you could just read that information to yourself?  
23 The FCC has an amazing habit of sometimes calling questions  
24 directives, I guess that's a little bit scarier than just a  
25 plain old question. Now, with respect to Directive No. 1,

1 were you aware that in March of 21001 that the FCC was  
2 inquiring or had wanted the information in response to a  
3 question or a directive like that?

4 A No. I really didn't start putting the pieces  
5 together probably until about mid March.

6 Q Until mid March.

7 A When I started to read through the files.

8 Q Now, were you asked by anyone to respond to  
9 Directive No. 1?

10 A No.

11 Q Do you know whether anyone at the radio station  
12 was asked to respond to Directive No. 1?

13 A I don't know.

14 Q Moving on to -- well, -- okay. Moving on to  
15 Director No. 2, were you asked to respond to Directive No.  
16 2?

17 A No.

18 Q Do you know of anyone at the radio station who was  
19 asked to respond to Directive No. 2?

20 A No.

21 Q Moving to Directive No. 3, were you asked to  
22 respond to Directive No. 3 by anyone?

23 A No.

24 Q Do you know whether anyone at the radio station  
25 was asked to respond to Directive No. 3?



1 A I don't know.

2 Q Directive No. 4, were you asked to respond by  
3 anyone to Directive No. 4?

4 A No.

5 Q Do you know whether anyone at the radio station  
6 was asked to respond to Directive No. 4?

7 A I don't know.

8 Q Directive No. 5, were you asked to respond by  
9 anyone to Directive No. 5?

10 A No.

11 Q Including part A, or subpart (a), whatever you  
12 want to call that?

13 A No, not at the time of my arrival I was not.

14 Q And do you know whether anyone at the radio  
15 station was asked to respond to Directive No. 5, including  
16 subpart (a)?

17 A I don't know.

18 Q Now, in front of you there happens to be a copy of  
19 a letter dated April 5 and it was filed at the Federal  
20 Communications Commission on April 6, 2001. And prior to  
21 the time this letter was filed with the FCC, did you see  
22 this letter?

23 A I saw it in draft form.

24 Q You saw it in draft form. Were you asked to  
25 provide any information or comments relative to the letter?

1           A     I really can't remember other than that I had put  
2     a few things in motion. I had asked that the Public File be  
3     moved into my office, into a locked cabinet. I did, the  
4     quarter was just ending actually towards the end of March,  
5     so I wanted to make sure that all the public affairs  
6     programs, things were correct as far as what was going to  
7     put in there from here on out.

8           Q     At least for that quarter you would have some  
9     control over how that --

10          A     Right, even though I came at the end of the  
11     quarter, I wanted to see what was the process, walk me  
12     through the process, what was your routine.

13          Q     And what was their routine?

14          A     The routine was to pull from, at that point the  
15     NPR website, the Issues Programs List from NPR, and to  
16     collect from the producers basically a who, what, how, when,  
17     where, why sheet for the public affairs programs, not all of  
18     them but those that really tackled substantive issues in the  
19     community.

20          Q     And as a consequence of that, a document or a  
21     series of documents was generated?

22          A     Yes.

23          Q     And who physically actually caused the documents  
24     to be generated?

25          A     I would say to Bill, Operations Manager, because

1 the producers push electronically their copy as the program  
2 is done, I think that's better than waiting, oh, give us the  
3 last three months. So, what I had asked the producers to do  
4 was just do it as you do it, just put us on your list as you  
5 give a run sheet to all your different guests and what not,  
6 and the announcer operators, just make sure Bill gets one  
7 and he pushes that into a file, I believe, on his computer  
8 and stores those up. And then I asked him to put those in a  
9 folder and hand those to me ten days before the end, after  
10 the end of the quarter.

11 Q Which he did?

12 A Yes.

13 Q So, sometime between April 1 and April 10,  
14 Mr. Helgeson gave you a file folder that had in it whatever  
15 information was necessary, so far as you know, to meet the  
16 requirements of the FCC for an Issues Programs List?

17 A Yes.

18 Q Did you personally review whatever it was that he  
19 gave you?

20 A I was curious. I hadn't heard all the programs,  
21 so I wanted to see what kind of topics they were tackling,  
22 and I read through them.

23 Q And did whatever information you receive comport  
24 with your understanding of what was required to be in that  
25 Public File?

1           A     With my understanding, yes. I may not have always  
2     the correct understanding but, from my understanding of  
3     public broadcasting and the role of the public broadcaster  
4     in the community, I believed that they fulfilled that  
5     function.

6           Q     Has the procedure for generating such lists  
7     changed in anyway since April of 2001?

8           A     Only that I've added more programs to be put into  
9     the file. And also when the war happened, I wanted to make  
10    sure that we listed what coverage that we gave when the war  
11    happened, both the war in Afghanistan and the war in Iraq.  
12    So, I wanted that to be pretty precise in case there were  
13    questions asked.

14          Q     Now, I want to focus your attention on some of the  
15    substantive information that appears in this letter, since  
16    when we talked the indication was that you at least had had  
17    the opportunity to review a draft?

18          A     Of this particular, yes.

19          Q     Yes. And somewhere in this mess I'll find mine  
20    instead of having to pull yours.

21          A     Go ahead.

22          Q     Let me see if I can find it first.

23                MS. REPP: I think you had donated --

24                MR. SHOOK: I may have. Do you have one?

25                MS. REPP: No.

1 MR. SHOOK: Okay. I'll tell you what, let's see  
2 if we can do this so that both of us can look at it.

3 BY MR. SHOOK:

4 Q Moving to page three of the April 5 letter that  
5 went to the Commission, there is the -- basically it's  
6 supposed to replicate the directive that came from the  
7 Commission, let's just see whether or not that was the case  
8 here. So, also side by side I'm showing you the February  
9 2001 letter that the Commission sent to SFUSD by way of Mr.  
10 Sanchez. And do the -- it appears that the Directives  
11 match?

12 A Absolutely, yes.

13 Q Now, in terms of the response, did you have any  
14 role, whatsoever, in providing substantive information that  
15 appears in the response, and please feel free to review the  
16 entire response if you need to before answering that?

17 A When I found out about the license challenge, I  
18 wanted to talk to the station's lawyer and find out what was  
19 going on.

20 MS. REPP: Excuse me, Nicole, if I could just  
21 interject that when you discuss your conversations with  
22 Ernie Sanchez, that you not get into the substance of the  
23 conversation, you can mention that you have had a  
24 conversation, because of the attorney/client privilege you  
25 don't have to go into substance.

1 THE WITNESS: Okay. Thank, Marissa.

2 MS. REPP: Okay.

3 THE WITNESS: I needed to be briefed and  
4 Ms. Wright needed to be briefed, and as it turned out,  
5 Dr. Ackerman needed to be briefed. And so we called Ernie  
6 and I was just confused as to why something from 1997 had  
7 languished.

8 Ernie spoke to Jackie and I, and Jackie and I felt  
9 that we needed to prod, get something happening with regard  
10 to the license challenge. That it felt like it was just  
11 languishing there. We didn't know why but it was like,  
12 well, we have to put some movement behind this. So, we  
13 asked Ernie, Ernie, put some movement behind it. And he  
14 said, I'm going to draft a response, I'll draft something,  
15 you can look at this. I must say I never connected it to  
16 this. I was still trying to figure out how to use the  
17 copier. And this is really a complex situation and it had  
18 happened a long time ago. And I didn't want to -- it takes  
19 me awhile to decide about complexity, I didn't want to come  
20 to any quick judgments, especially given the fact that some  
21 people were still at the station that were involved in this.

22 So, then Ernie came -- this is April, so I had all  
23 of March, by mid March I was starting to read through the  
24 original complaint by GGPR and the supplemental, and the  
25 license, actually the Public File looked in very good order

1 at that point. There were nicely labeled Issues Programs  
2 List from the nineties, they had NPR and a couple of the  
3 public affairs shows, they also had a Program Guide in them,  
4 I saw that there was the contour map, I saw the engineer's  
5 statement, it looked like everything was fine.

6 BY MR. SHOOK:

7 Q So, this would have been around mid March you  
8 would have looked at the KALW Public File?

9 A Exactly. I mean I started to look at it in the  
10 very beginning, like my second week there, because I had  
11 three days off, after I started I had a brief time off I had  
12 already planned something, couldn't be at work, so it really  
13 got my feet on the ground the second week in March. I had  
14 all my keys and all that. And was just trying to connect  
15 the dots with all this and trying to get movement. And Mr.  
16 Sanchez was game for the movement, yeah, you know. So, he  
17 sent this to Jackie and I as a draft. And, you know, at  
18 first glance it seemed fine, it seemed like things were  
19 being answered, everything was in order, and that we were  
20 trying to get some movement around this issue. So, we said,  
21 that's great, Ernie, send it off.

22 Q Now, you know, I really only asked you about  
23 Directive 1, and so it may be a bit unfair in the sense that  
24 there were four other directives. And would it be the case  
25 that you would have looked at the entirety of the letter and

1 the attachments prior to the time it was sent to the  
2 Commission?

3 A I don't remember attachments but I do remember  
4 looking at the letter, trying to read it as best I could,  
5 certainly not with the eye that I have now.

6 Q Well, in reading it in March of 2001, or early  
7 April of 2001, whenever it was that you actually read the  
8 draft, did it ever come up that you should supply your own  
9 declaration to verify whatever it was that was said in the  
10 letter?

11 A No.

12 Q And would it be fair to state that you did not do  
13 that because you didn't have any personal involvement in  
14 what was going on at the station at the time the renewal  
15 certification was made?

16 A I couldn't speak from knowledge, so --

17 Q Right, you weren't there.

18 A I wasn't there.

19 Q So, in terms of, you know, your understanding or  
20 your view that the information that appeared in the draft  
21 that you saw was accurate, it was based on your  
22 understanding of the situation at the time?

23 A Exactly right.

24 Q Did you happen to discuss with Mr. Helgeson the  
25 contents of the response to Directive 1?



1           A     I don't remember. I might have, I don't remember.

2           Q     Now, if you could look at Directive 2 and the

3 response to that?

4           A     The Issues Programs List.

5           Q     Right, which begins on page five. Why don't you  
6 just take a moment to read through the response. You can do  
7 that to yourself.

8           MR. SHOOK: We can go off the record.

9           (Off the record at 4:08 p.m.)

10          (On the record at 4:10 p.m.)

11          BY MR. SHOOK:

12          Q     What you've read is Directive 2 and the response  
13 that the station gave at that time in April of 2001. Did  
14 you have a chance to review the station's response prior to  
15 it's submission to the FCC?

16          A     In the draft form, I looked over it.

17          Q     And as far as you could tell, it was accurate?

18          A     I can't really recall. I think I was working on a  
19 lot of trust then.

20          Q     One question that I didn't ask with respect to  
21 Directive 1 and the response to it, and if you need to  
22 please feel free to read it again, it's rather lengthy.  
23 Knowing what you know now, is there anything in the response  
24 that you would change? I can get more specific as time goes  
25 along but I'll just start with something very broad and